

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 BASSAM NABULSI, AND HIS . Civil Action
4 WIFE, RIMA NABULSI, . No. H-06-2683
5 Plaintiffs, .
6 VS. .
7 H.H. SHEIKH ISSA BIN .
8 ZAYED AL NAHYAN, H.H. .
9 SHEIKH NASSER BIN ZAYED .
10 AL NAHYAN, H.H. SHEIKH .
11 SAIF BIN ZAYED AL .
12 NAHYAN, H.H. SHEIKH .
13 ADBULLAH BIN ZAYED AL .
14 NAHYAN, H.H. SHEIKH .
15 MOHAMMED BIN ZAYED AL .
16 NAHYAN, and THE .
17 PARTNERSHIP OF THE ROYAL .
18 FAMILY BIN ZAYED AL .
19 NAHYNA, .
20 Defendants. .
21 . October 1, 200 .
22 . 11:30 A.M. .
23 . HOUSTON, TEXAS .

TRANSCRIPT of PROCEEDINGS
BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE

18 | APPEARANCES:

19 FOR PLAINTIFFS: MR. ANTHONY G. BUZBEE
20 The Buzbee Law Firm
21 1910 Ice Cold Storage Building
104 21st Street Moody Avenue
Galveston, Texas 77550

22 FOR DEFENDANTS: MR. ALISTAIR BYRNE DAWSON
23 Beck, Redden & Secrest, LLP
1221 McKinney
Suite 4500
24 Houston, Texas 77010

25 Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 APPEARANCES (Continued) :2
3 OFFICIAL COURT REPORTER: MS. STEPHANIE KAY CARLISLE-NEISSE
4 U.S. District Court
5 515 Rusk, Suite 8016
6 Houston, Texas 77002
7 713.250.5157
8
9
10
11
12
13
14
15
16 * * *
17
18
19
20
21
22
23
24
25

PROCEEDINGS

(October 1, 2008)

THE COURT: Good morning. Please be seated.

This is Civil Action H-06-2683, Bassam Nabulsi

11:30:49AM 5 versus His Highness Sheikh Issa Bin Zayed Al Nahyan.

Will counsel please identify themselves?

MR. BUZBEE: Tony Buzbee for the plaintiffs, Your

8 | Honor.

MR. DAWSON: Alistair Dawson for the defendant, Your

11:31:04AM 10 || Honor.

THE COURT: Thank you.

12 We are here on several docketed motions but I
13 also have Mr. Buzbee's September 24th letter and Mr. Dawson's
14 September 26th letter. They are not docketed.

11:31:18AM 15 Do you want me to have the clerk docket them?

16 MR. DAWSON: I don't think it's necessary.

17 MR. BUZBEE: No, Your Honor.

18 MR. DAWSON: I will also inform the Court that with
19 respect to the depositions of the folks in Paris, we have
20 reached agreement on the dates for those.

21 THE COURT: What dates are they?

22 MR. DAWSON: The 5th and 6th of November.

23 MR. BUZBEE: Yes, sir.

24 THE COURT: Okay. So, we're here on Docket Entry

11:31:46AM 25 67, which is plaintiff's motion to compel the depositions of

1 Sheik Issa and his business manager in Houston, and Docket
2 Entry 68, which is defendant's response and motion for
3 protective order.

4 I have read the very thorough briefing on the
11:32:10AM 5 issue. I don't see any issue -- any briefing by the plaintiff
6 about whether the business manager would be subject to the
7 subpoena powers of this Court. You make a lot of arguments
8 that his testimony is relevant. How can I subpoena a U.A.E.
9 citizen to be deposed anywhere?

11:32:33AM 10 MR. BUZBEE: Your Honor, you cannot. Obviously, I'm
11 not trying to argue that you can. My argument was that the
12 Sheikh controls this man because he is his business manager
13 and that the Sheikh could be forced -- you have power over him
14 because -- I believe you have jurisdiction over him to force
11:32:51AM 15 him to have his business manager. So, that was my argument.

16 THE COURT: All right. There's a suggestion by the
17 defendant that I should rule on the motions in a certain order
18 and if I follow the defendant's suggestion that the Sheikh's
19 deposition may not be needed. I intend to resolve all the
11:33:14AM 20 pending jurisdictional issues at the same time. Although the
21 Sheikh raises different arguments, they are nevertheless
22 related. This is an old case, and it raises important issues.
23 Judicial economy counsels that the motions be addressed
24 together and soon.

11:33:36AM 25 The deposition of the Sheikh is relevant to his

1 motions to dismiss; and I will allow him to be deposed about
2 his contacts with this forum and to be deposed concerning
3 other questions dealing with the pending motions, including
4 the defendant's motion to dismiss based on *forum non
conveniens*. Plaintiff's counsel may not question him about
5 the merits of the case, although, I realize there may be some
6 overlap potentially on some questions.

11:34:20AM 10 So, the plaintiff's motion to compel Sheikh
11 Issa's deposition is granted.

12 Plaintiffs's motion to compel the deposition of
13 Saif Al Suwaidi is denied.

14 Defendant's motion for protective order is
11:34:35AM 15 denied as to the Sheikh and granted as to Mr. Al Suwaidi.

16 As to the location of the deposition, the
17 Sheikh should be deposed in Paris on November 5th or 6th at
18 the same time counsel is there deposing the other two people.
19 Apparently, he travels frequently to Europe. So, I'm ordering
20 that you-all tell me now or soon -- certainly within this next
21 week -- the dates, times, and places of all three deponents.

22 I don't think the Sheikh's deposition should
23 take more than -- I don't think Mr. Buzbee should be allowed
24 more than two hours of questioning, assuming he gets answers
25 and not objections. If you want to, of course, depose him at

1 the same time for purposes of the pending motions, you may.
2 But Mr. Buzbee is limited to two hours of questioning.

3 The defendant sent over a proposed protective
4 order. Have you-all agreed to the protective order?

11:35:43AM 5 MR. BUZBEE: We have not, Your Honor.

6 THE COURT: I looked at these documents. There's
7 nothing particularly exciting about these documents. Why do
8 you need a protective order?

9 MR. DAWSON: As I understand it, Your Honor, my
11:35:56AM 10 colleague at my firm collected these documents and he is the
11 one who told me -- he is in Judge Kent's court right now. But
12 there are bank records that have confidential banking
13 information and credit card payment -- bills, if you will,
14 that have confidential information in them. Those are the
11:36:15AM 15 only things that we have asked to be treated with
16 confidentiality. I think it is both the bank account numbers,
17 the credit card numbers, and, frankly, there are some rather
18 large transactions in there.

19 THE COURT: Give these two stacks to Mr. Dawson.

11:36:31AM 20 You can either give Mr. Buzbee a stack now with
21 the understanding he doesn't really care about the American
22 Express account numbers or you can redact the account numbers
23 and send them to him. The amounts could conceivably be
24 relevant. The only thing you can redact is personal
11:36:50AM 25 identifiers. I didn't see any Social Security numbers. There

1 are a lot of account numbers.

2 Mr. Buzbee probably has a bigger American
3 Express account than the Sheikh anyway; so, he probably
4 wouldn't be concerned about that.

11:37:03AM 5 MR. DAWSON: We will redact them, Your Honor.

6 THE COURT: Now, I also -- the defendant sent me
7 objections to the proposed discovery. Nobody has asked that I
8 rule on any of the objections. You don't have a motion to
9 compel answers to interrogatories or requests for admissions
11:37:20AM 10 or anything.

11 MR. BUZBEE: It's not ripe before you right now. I
12 am going to.

13 THE COURT: I looked at them. Let's rule on them
14 now. Which ones do you have a concern with?

11:37:29AM 15 MR. BUZBEE: The first problem that I have, Your
16 Honor, is that the interrogatories are not verified.

17 THE COURT: They need to be verified certainly
18 before the deposition.

19 MR. DAWSON: Yes, Your Honor.

11:37:38AM 20 THE COURT: What else?

21 MR. BUZBEE: The first issue, Your Honor -- I think
22 it is a crux issue -- on the issue of *forum non conveniens*,
23 that is, an alternative adequate forum, it's my position, as I
24 put in the brief, that if the Sheikh is indeed in these
11:37:54AM 25 pictures that I submitted, that he has influence over the

1 police and over the Court system such that Bassam Nabulsi
2 cannot get a fair trial in that forum. And I think that's
3 absolutely -- it is weird; it is unusual. But in this
4 particular instance I think I'm entitled to know what his
11:38:12AM 5 position is about those pictures.

6 THE COURT: Which particular motion -- which
7 particular set of discovery are you referring to?

8 MR. BUZBEE: I think I titled it "Plaintiffs'
9 Discovery Request Pertaining to *Forum Non Conveniens*." I have
11:38:28AM 10 a copy of it, if I can approach.

11 THE COURT: Yeah, let me see it.

12 MR. BUZBEE: This is the answers that defendant
13 provided.

14 Essentially, Your Honor --

11:38:42AM 15 THE COURT: Where are the photographs? That's the
16 one I'm talking about.

17 MR. BUZBEE: They are in the record. I have a bunch
18 of the photographs. I don't know if you want to see those.
19 The actual request themselves that I sent to Mr. Dawson, I
11:38:56AM 20 don't have on my person.

21 THE COURT: I don't think you sent me those with
22 your protective order materials, did you?

23 MR. DAWSON: I don't think that I did. Not with the
24 protective order, no.

11:39:07AM 25 THE COURT: You sent me objections to request for

1 production dealing with service of process and request for
2 admissions dealing with service of process and interrogatories
3 dealing with service of process. I didn't get the papers
4 dealing with *forum non conveniens*.

11:39:23AM 5 MR. DAWSON: I don't think I submitted those because
6 there was no motion on them and I didn't know that we would
7 be --

8 THE COURT: Well, if you want a formal motion, my
9 concern is that when you get --

11:39:34AM 10 MR. DAWSON: I am happy to argue it now. If I
11 could --

12 THE COURT: If, in fact -- I don't recall all the
13 photographs now; but I do seem to recall that there are law
14 enforcement officials, or at least some type of people with
11:39:49AM 15 uniforms, in some of the photographs. Wouldn't that be
16 relevant?

17 MR. DAWSON: No.

18 THE COURT: Why?

19 MR. DAWSON: The Court in *MBI Group, Inc., versus*
11:39:59AM 20 *Credit Foncier Du Cameroun* -- the cite to that is 558
21 F.Supp.2d 21 -- addressed this exact issue. In that case, the
22 plaintiff, just like this plaintiff, said, look, I was
23 arrested in Cameroon. All these bad things happened to me in
24 Cameroon. And the executive branch is in cahoots with the
11:40:21AM 25 defendant. I cannot get a fair trial in Cameroon. And,

1 therefore, argue that *forum non conveniens* should not apply
2 for the same reasons Mr. Buzbee has just argued.

3 The Court went through and said -- actually, in
4 that case, if you read it, Judge, they had a lot more evidence
11:40:39AM 5 that Cameroon was -- not -- that you couldn't have an adequate
6 remedy in Cameroon. They had a thing from the Justice
7 Department saying that the judiciary in Cameroon is not
8 independent of the executive branch. And they had a lawyer
9 put a thing in the record saying: This guy can't get a fair
11:40:57AM 10 trial. He has been arrested. All these terrible things have
11 happened to him.

12 And here's what the Court said: The Court says
13 "the alleged actions at issue were taken by the executive
14 branch of the Cameroonian government, not the judiciary."

11:41:11AM 15 The defendants have submitted evidence that the
16 Cameroon judiciary is independent. The plaintiffs cannot
17 disturb that presumption -- and there is a presumption under
18 *forum non conveniens* law -- of independence by merely pointing
19 to generalized reports that the executive branch may exert
11:41:28AM 20 undue influence over the judiciary.

21 They went on to say "the fact that the fellow
22 can't travel to Cameroon is not relevant for the *forum non*
23 *conveniens*." They said "the mere fact that the plaintiff
24 could not personally travel to the proceedings..."

11:41:43AM 25 THE COURT: Do you have some authority to the

1 contrary?

2 MR. BUZBEE: I haven't looked at that case.

3 THE COURT: We better have some briefing on this.

4 What else -- what else -- other than the photographs, what is
11:41:55AM 5 in dispute with respect to these -- written discovery?

6 MR. BUZBEE: My primary dispute -- and it's clear
7 from reading. Because I've done a lot of my own due diligence
8 and informal discovery on this case -- is that I do not
9 believe -- and Mr. Dawson can correct me -- that the Sheikh
11:42:09AM 10 has even been consulted in answering these discovery answers,
11 has not even been consulted.

12 Because, for instance, Ali Tahgi is a guy
13 that's well-known here in Houston that sells fancy clothes
14 across from the Galleria. He is a personal friend of this
11:42:22AM 15 Sheikh. But yet in his discovery responses, he says "after a
16 diligent search, I cannot confirm or deny." That tells me
17 right there that they never even asked this guy about these
18 discovery requests.

19 Another example. He was asked if he met the
11:42:37AM 20 Mayor Brown. Well, Your Honor, I have a picture of him with
21 Mayor Brown. They spent a lot of time together when the mayor
22 was in office here in Houston at the Four Seasons. And he
23 again says in his deposition -- or his discovery responses, "I
24 cannot confirm it after a due diligence search." Now, one
11:42:57AM 25 could say, well, he's such an important and busy man that he

11:43:09AM

1 meets so many great dignitaries that he wouldn't know. But
2 remember, Your Honor, this is a guy that lived as much three
3 months out of the year here in Houston. This was a
4 significant part of his life here in Houston. He spent a lot
5 of time with Mayor Brown. Mayor Brown sent letters for him
6 for their business dealings and so forth. That tells me, just
7 commonsensically, that he has not been consulted.

8 So, all the answers I have, which explains why
9 they are not verified, are simply part of his little entourage
10 over there answering this stuff for him while he -- I'll tell
11 the Court -- I know for a fact -- is in Germany. He is in
12 Germany. They are arguing the case should be in the U.A.E.
13 Well, this fellow is living in Germany now. That's my problem
14 with their discovery.

11:43:44AM

15 THE COURT: What contact have you had with the
16 Sheikh?

11:43:57AM

17 MR. DAWSON: Well, Your Honor, respectfully, how we
18 went about answering these -- and I can tell you that my firm
19 was actively involved in preparing these answers and spent --
20 a colleague -- colleague spent 10 days in the U.A.E. working
21 to get these answers and working to get these documents.
22 Frankly, how we went about it, who we talked to, and how we
23 gathered information is all protected by privilege, Your
24 Honor. I don't think that we --

11:44:12AM

25 THE COURT: You do need to have the Sheikh verify

1 the answers.

2 MR. DAWSON: I understand that. We will follow the
3 Court's order with respect to that. Mr. Buzbee can examine
4 him at his deposition, if that's how he wants to spend his
11:44:24AM 5 time, cross-examining him about the answers --

6 THE COURT: Let me say, most of the answers that I
7 read that deal with the three sets of objections, the answers
8 were fairly reasonable as discovery goes. There were many
9 cases where he denied a request but said "but I will admit a
11:44:41AM 10 limited subset of that" or "you're not correct but here's the
11 name of the right company." I don't think this is
12 stonewalling in the sense that I have seen in some cases.

13 MR. BUZBEE: I agree with you, Your Honor. I do
14 think, though, that the answers are not comprehensive and
11:44:57AM 15 complete because the actual defendant has not been contacted
16 or discussed. I believe that to be the case. I haven't heard
17 otherwise.

18 THE COURT: There used to be a rule of Texas Civil
19 Procedure, a motion to show authority, whether the attorney
11:45:11AM 20 was required to show authority. I even filed a couple of
21 those back in the dark ages. I'm not aware of any analog
22 under the federal rules. Mr. Dawson is an officer of the
23 Court. I take his word that he has dealt with the Sheikh. I
24 don't know that you are prohibited from talking to a client
11:45:30AM 25 through an intermediary. I bet plaintiff personal injury

1 lawyers sometimes go through referring attorneys, at least I'm
2 told that might happen.

3 MR. BUZBEE: Yes, Your Honor. The verification will
4 be a step towards. We'll ripen the issue on the pictures and
11:45:46AM 5 that will probably be everything I need.

6 I would just point out to the Court that when
7 we take the man's deposition, I'm limited to two hours; but I
8 want remind the Court that we're going to have an interpreter
9 which is going to slow the process down substantially.

11:46:03AM 10 THE COURT: If you are going to do that in Paris,
11 what is that, an 8-hour difference?

12 MR. DAWSON: Six or seven, I believe, Your Honor.
13 Six to London. I don't know if Paris is another hour or not.

14 THE COURT: Paris is another hour, I think.

11:46:17AM 15 So -- well, you better -- if you start first
16 thing in the morning, you can call me if there's a problem.
17 You might do the Sheikh early in the morning. These other two
18 people -- the previous day -- I will let you worry about that.
19 If you start the Sheikh's deposition at -- seven hours
11:46:42AM 20 later -- you think about it, about the logistics.

21 MR. BUZBEE: I was just -- as far as the two hours.

22 THE COURT: Doesn't the Sheikh speak English?

23 MR. DAWSON: I don't believe he does.

24 MR. BUZBEE: He does.

11:47:01AM 25 MR. DAWSON: I think he's got limited English. I

1 think in that deposition it's probable that we will have an
2 interpreter. I think there will be an interpreter in the
3 deposition of Mr. Albars. I'm not sure that it will be
4 necessary in the deposition of Mr. Faraj.

11:47:15AM 5 THE COURT: I'm going to change my mind and allow
6 three hours for the Sheikh because of the interpreter.

7 MR. DAWSON: Are there any time limits on the other
8 depositions or just that one?

9 THE COURT: I'm more concerned about the Sheikh. I
11:47:27AM 10 think one of the other depositions will be fairly brief. I
11 don't know about the lawyer's deposition.

12 MR. DAWSON: Fair enough.

13 THE COURT: Doesn't your co-counsel speak Arabic?

14 MR. BUZBEE: He does. My client and my co-counsel
11:47:39AM 15 speak Arabic.

16 THE COURT: Okay.

17 MR. BUZBEE: They will be there to check the
18 interpreter. I will be completely ignorant.

19 THE COURT: Get your motion to compel filed fairly
11:47:49AM 20 quickly.

21 MR. BUZBEE: Yes, sir.

22 THE COURT: The turnaround was really remarkable on
23 the pending motions. And I will rule as quickly as I can.

24 MR. BUZBEE: Yes, Your Honor.

11:48:00AM 25 THE COURT: Now that we're all here, is there

1 anything else we can profitably address this morning?

2 MR. DAWSON: I will tell the Court that I was
3 disappointed not to get to argue a case that Mr. McDade lost
4 that was relevant to this issue.

11:48:15AM 5 THE COURT: Which case is that?

6 MR. DAWSON: They *Wyatt versus Kaplan* case where
7 Mr. McDade sued on behalf of Oscar Wyatt having to do with
8 defamation or slander or something. And the Court denied
9 discovery and then denied -- said there was no jurisdiction.
10 The issue up on appeal was whether that was appropriate. And
11 Mr. McDade lost again. I was looking forward to using his
12 losses to hopefully try and convince the Court of our
13 position.

14 THE COURT: As you point out, Mr. Dawson, in a
15 previous opinion I denied discovery because the then
16 plaintiff's counsel basically asked for it very late as kind
17 of a fallback argument in case he lost on the merits. This
18 discovery has been timely and it is relevant. I'm not saying
19 you are going to win on the motion, but I think plaintiff is
20 entitled to reasonable discovery on these jurisdictional
21 issues.

22 MR. DAWSON: I understand that, Your Honor. The law
23 in the Fifth Circuit -- I'm not trying to reargue the issue.
24 We may have to tea this up. But the law in the Fifth Circuit
25 is clear that you are not entitled to discovery about

1 undisputed facts in a jurisdictional situation. And there's
2 been a lot of facts that have been stipulated to. We gave, I
3 think, 90 admissions in those set of admissions. We admitted
4 90 sets of facts. We are not contesting any of his
11:49:46AM 5 jurisdictional assertions. He said you came here every year.
6 You bought all this stuff. All of that is uncontested. The
7 law in the Fifth Circuit is you are not entitled to
8 depositions or any further --

9 THE COURT: That may not be contested --

11:50:00AM 10 MR. DAWSON: But there are other things that might
11 be contested.

12 THE COURT: I don't know that the defendant is
13 allowed to circumscribe the universe of relevant facts and say
14 "these are the relevant facts and we don't contest them;
11:50:10AM 15 therefore, you are not entitled to discovery." There's a
16 big -- let's don't beat around the bush. I am very skeptical
17 about general jurisdiction but there might be specific
18 jurisdiction here. I know the contract was signed in the
19 U.A.E. and I know it's subject to U.A.E. law.

11:50:28AM 20 The plaintiff alleges in his amended complaint
21 that the partnership began, whatever that means, here; and I
22 assume the plaintiff will have some evidence showing that
23 there was some type of oral agreement with the Sheikh here.
24 Now, whether that's true or is sufficient, I don't know; but
11:50:52AM 25 it certainly is a colorable claim that I think warrants some

1 discovery.

2 MR. DAWSON: I understand.

3 MR. BUZBEE: Your Honor, we will prove that this
4 business that you see is just -- they formed many businesses.
11:51:02AM 5 That's just one vehicle through which they did some of their
6 work. And we will prove to you that two months out of every
7 year they were conducting their business out of the Four
8 Seasons. Two months a year out of Houston, Texas, all their
9 business was centered right there because that's where they
11:51:18AM 10 were.

11 THE COURT: Well, I look forward to the briefing. I
12 can't wait for the new year --

13 MR. BUZBEE: I bet.

14 THE COURT: Anything else?

11:51:26AM 15 MR. BUZBEE: No, sir.

16 THE COURT: Thank you. You are excused.

17 (Proceedings concluded)

18 * * *

19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled cause, to the best
of my ability.

21

22 //s _____
23 Stephanie Kay Carlisle-Neisser CSR, RPR
Official Court Reporter

10/15/2008
Date

24

25